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INSTITUTE OF ADVANCED
LEGAL STUDIES

IN THE HIGH COURT OF BASUTOLAND.

CRIMINAL SESSIONS

2nd NOVEMBER 1948.

BEFORE:

Mr. Acting Justice Sutton.

ASSESSORS:

J. Elliot.
F. I. Parnell.

AFRICAN ASSESSORS:

George D. Makhehlè.
Moramang Jonathan.

| | | | |
|-------|-----|------|----------------------------|
| R E X | vs. | (1) | Bereng Griffith Lerothola. |
| | | (2) | Gabashane Masupha. |
| | | (3) | Mojautu, Nonyana. |
| | | (4) | Makione Mphiko. |
| | | (5) | Sankatane Masupha. |
| | | (6) | Mosihoa Masupha. |
| | | (7) | Kemaketse Masupha. |
| | | (8) | Eusi Rakakali. |
| | | (9) | Saferi Ntsoso. |
| | | (10) | Ramabanta Mahleke. |
| | | (11) | Moloi Ntai. |
| | | (12) | Titimus Ramashamole |

VOLUME: 4.

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INSTITUTE OF ADVANCED
LEGAL STUDIES

Reported by:
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P.O. Box 2038
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FOURTH DAY.

5th NOVEMBER, 1948

MOLEMOHI MPIKO, (under former oath)

RE-EXAMINED BY Mr. THOMPSON:

Can you tell the Court whether No. 4 is an ordinary commoner or whether he holds any position of authority? -- He is a chief at our place.

A chief? -- Yes, he is headman of that village.
HIS LORDSHIP: You told us that you ran away from the Police Camp back to your village? -- Yes.

Then No. 4 brought you back? -- Yes.

As headman of that village was that his duty? -- Yes.

You say you saw a motor car there that evening? -- Yes.

Where did you see that motor car? -- I saw the car as we moved off and I also saw it ...

Move off from where? -- When we left home.

You mean when you moved off from behind No. 4's huts? -- No, I saw it after we had got out of the village; I saw it come up to us.

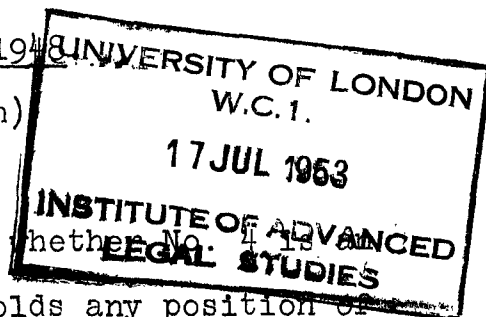
Then you were divided into groups? -- Yes.

Did you notice whose car it was? -- No, I didn't know at that time, but I did notice later when we got to the scene of the assault.

When you got to the scene of the assault, where was the car? -- The motor car was as far as from here to the door, and the scene of the assault was here where I am standing.

Was it standing in the road, or where? -- Yes, on the road.

/Then did



Then did you notice whose car it was? -- Yes, I noticed whose car it was.

Whose was it? -- No, I didn't know whose car it was, but I saw Chief Gabashane come out of the car.

Anybody else come out of it? -- Two of them, and No. 6.

Yes. You didn't notice the number of the car? -- No, I didn't see the number of the car. It was dark at night.

Did you see what kind of a car it was? -- No, because we were busy with the deceased.

ASSESSOR JONATHAN: When you went to this place to kill a person who was the leader of you all? -- We were with Chief Bereng and No. 4 accused.

When you got to the scene of the assault who then said, "This is the person; kill him"? -- It was Chief Bereng who gave the order of "This is the man".

As it was so dark that you were not able to recognize this man whom you knew before, when did you know who it was? -- I recognized the man after our return.
HIS LORDSHIP: Returned where? -- When we returned from killing the man.

Yes, but he was in the donga then? -- Yes, he was in the donga.

You mean you recognized him from what you had been told? -- Yes, from what I was told.

ASSESSOR JONATHAN: How was it that you were able to recognize Fusi in that darkness? -- I recognized Fusi because he came up to us and I saw him.

How far away were the houses of Fusi from the scene of the assault? -- As far as the Police houses outside.

/When

When you saw Fusi was he alone? -- He was alone following a horse. .

HIS LORDSHIP: Whose horse? -- The horse that was ridden by Meleke.

ASSESSOR JONATHAN: Such darkness and you saw the horse and you saw Fusi and were able to recognize him? -- Yes, I did.

HIS LORDSHIP: How is it that you recognized the horse? The horse came up to you and you pulled the man off, but how is it that you didn't recognize him? -- I did not recognize the man but I was able to recognize the horse because I knew it very well, even during the day. I was not able to recognize the man because there was confusion and he was being assaulted.

ASSESSOR JONATHAN: How is it that you were able to recognize the horse which you saw for the first time, and you were not able to recognize Meleke whom you knew very well, until you killed him, and threw him away in the donga? -- I have answered that question.

ASSESSOR MAKHEHLE: You said that there was a motor car. Did that car have the lights on? -- Yes.

From when you first saw it until when it got to the scene of the crime? -- Yes, it had lights.

Did you say that you met Ntsane who told you that they were going to Mahleke's? -- Yes.

Did he tell you those who were going there? -- No, he did not.

This horse belonging to Ananias, did you see Meleke riding it? -- No, I know the horse. I used to see it in possession of Ananias.

/Who was

Who was the first person that told you you were going to kill a person? -- No. 4 accused.

Did he give you orders to accompany him and others to kill the person, or did he say he had had orders from some other person? -- He did not say that he had been ordered; he merely said, "We are going to kill a person".

But you said that Maklone is your elder brother; has he ever given you orders before to kill a person? -- No.

Did you ask him why he gave you orders to kill a person and why was the person to be killed? -- I understood that anybody who went back would be killed, and I was frightened.

You say that when the person met you it was Chief Bereng who gave the order that the person should be seized? -- Yes.

On how many occasions has Chief Bereng been at your home at Mamathe's? -- He has been visiting that village on many occasions, very often.

You say that you think he would be able to identify Maleke at night and say "This is the man"? -- I don't know that he would be able to identify anybody, because Meleke does not live in the village.

Meleke did not live in Mamathe's village? -- He lived in another village. Meleke lived in Lepai's village, or otherwise Phiri's village.

Did Chief Bereng live in that village of Phiri? -- No, I have never seen him there.

When Chief Bereng gave the order for Ntoane to cut did he state where to cut? -- Yes, he did. He gave the

/order

order for the lip to be cut.

This person whom you see, not knowing who it was, was he still alive or was he dead? The man you pulled from the horse? -- He was alive.

Did he struggle or did he speak? -- He did not speak. Yes, he did struggle.

HIS LORDSHIP: When the Chief gave the order to seize the man, was No. 2 present? -- Yes, he was just arriving.

RE-EXAMINED BY MR. THOMPSON (Continued)

When you escaped and No. 4 returned you to the Police, my information is that there was a policeman in No. 4's hut when you arrived; is that correct or not? -- Yes.

-----oOo-----

THE CROWN CALLS:

SOTHI CHELA, sworn states,

EXAMINED BY MR. THOMPSON:

M'lord before I begin with Sothi might I inform Your Lordship that there were three women called at the Preparatory whom I do not intend calling here; they are the wives of three of the accomplices.

HIS LORDSHIP: What are their names?

MR. THOMPSON: Memookho Molemohi, wife of the last witness.

Maseboha Chela, wife of the witness who is about to be called. Rosalia Mathibe, who is the wife of Sepalami.

Those three women I do not intend to call, but if the Defence wish to have them called I shall do so.

Sothi where do you live? -- I live at Masupha's.

Who is the head of that village? -- Gabashane.

No. 2 accused? Is that correct? -- Yes.

/Is this

Is this also known as Mamathe's? -- Yes, it is called Mamathe's.

Did you know the man, Meleke, who is now dead? -- Yes, I knew him.

Do you remember when he died? -- I don't know because I can't read.

I didn't mean the date. Do you remember the occasion when he died? -- Yes, I know the occasion when he died.

Do you remember what day of the week it was? -- It was on a Thursday.

Where were you on that Thursday evening after the sun had set? -- I was at the stable.

Yes. Where were you in the afternoon of that Thursday? -- On the Thursday I was at the stable.

In case Your Lordship is misled, this witness also said this in the Preparatory - he was at the stable - but this is a different occasion.

HIS LORDSHIP: Yes.

MR. THOMPSON: On the Thursday evening what happened to you? -- I was called by No. 4 accused.

From where? -- I was at the stable.

And what did No. 4 say to you? -- He called me to him.

What did he say to you? -- He said "Come here".

Yes, what else? -- I went with him.

HIS LORDSHIP: Where is this stable? -- The stable is outside near my house.

MR. THOMPSON: Is it your own stable? -- Yes.

/In Mamathe's

In Mamathe's village? -- Yes.

Where did you go with No. 4? -- We went along the path on the plateau.

Where to? -- In the direction of Fusi's.

What happened? -- We went on and we came to David's place in the hollow. We found others there.

Can you remember whom you found there? -- Yes, I can.

Where is David's place in relation to the place where No. 4 lives? -- Some distance away from No. 4's place.

On plan No. 2 m'lord, just above spot H. is David's place. (600 yards m'lord). Now Sothi, I think we better go back a bit. No. 4 called you from the stable? -- Yes.

In which direction did you go? -- In the direction of Fusi's.

You left the village with No. 4 going in the direction of Fusi's. Is that correct? -- Yes.

Just you and No. 4? -- Yes, as we went out of the village there were just the two of us.

And did just the two of you continue walking along? -- Yes.

You say you met some persons? -- Yes.

Where did you say that was? -- At David's place.

Oh. And who were those persons? Did you recognize them? -- Yes, I recognized them.

Will you give me their names please? -- I recognized Ramabanta, No. 10; Mosiuoa, No. 6; Sankatana, No. 5; Kemaketse, No. 7; Seferi, No. 9; Molemohi; Sepalami; Mapeshoane; Sothi as well.

/Yes.

Yes. Anybody else? -- Ntoane.

Chief Ntoane, yes? -- Mojautu, No. 3; Chief Gabashane, No. 2; Chief Bereng, No. 1.

Anybody else? -- That is all.

And then of course when you got there, in addition to the people you have named, there were yourself and No. 4? -- Yes.

What happened when you two men joined this group? Just a moment - was this group standing or walking? -- They were standing.

What happened when you joined them? -- A speech was made.

By whom? -- Chief Maklone, No. 4.

I just want to pause there for a moment. Why do you call No. 4 "Chief"? -- It was he who spoke

Yes, but why do you call him a Chief? Is he a chief? -- Yes, he is a chief, because he is placed in that village, and he is the one who rules us.

And do you owe him allegiance? -- Yes.

All right. No. 4 accused spoke. What did he say? -- That we are going to Fusi's.

Yes? -- Going to kill a person.

Yes? -- I then said "I am going back, running away".

Yes? -- But they said, "If you return, we shall kill you".

Who said that? -- No. 4 accused.

Did anybody else speak when you said you wanted to run away? -- No, nobody else.

What happened after you said you were going

/to run

to run away and you were told you would be killed if you did?

-- We then moved off and divided into two groups.

When you were told you were going to be killed, (Mr. Interpreter, I want you to put this in simple Sesuto to the witness), what was your reaction to that threat? -- I thought it best for me to go to this place where we were told to go.

Well when you joined this group and you wanted to run away and the threat was made to kill you and so forth, were there any vehicles in the vicinity? -- There was a car.

A motor car? -- Yes.

Whereabouts was the motor car? -- It was ahead of us.

Were you on a path or on a road or in the veld? -- We were still on the main road, where the path branches off from the main road.

When you joined this group of people whose names have been given by you, did you at that stage see a motor car or not? -- I saw the motor car at that time.

And where was this group of people as far as roads and paths are concerned? -- We were standing there where the motor car was to follow the road and we were to follow the footpath.

So you say this group was on the road? -- Yes.

Actually on the road itself? -- Yes.

All right. You saw the motor car and then, I think you've told me, the people moved off? -- Yes.

How did they move off, in what formation? -- They divided into two groups.

And did the two groups proceed separately? -- They

/proceeded

proceeded separately.

One in front of the other? -- Yes.

Who were in the first group, do you remember? --
Yes, I remember.

Give me their names please? -- Mosiuoa, No. 6;
Ramabanta, No. 10; Kemaketse, No. 7; Molemohi; No. 4; -
I think I have finished those who were in the first group.

And who were in the second group? -- Mapeshoane;
Seferi, No. 9; Sepalami; myself; - I don't know who were
in the motor car, I think Chief Ntoane, and others.

Chief Ntoane and others? -- Yes, but I didn't
know who were in the motor car.

Do you know where No. 1 accused, Chief Bereng,
was when you moved off in groups? -- He was in the motor
car, because I didn't see him on the ground.

All right. You moved off in groups. I think you
said you were in the second group? -- Yes.

And what happened? -- Then we moved off. We came
to Fusi's.

Yes. -- We found a person being held.

Was he already being held when you arrived? -- Yes.

When you moved off as a group did you move along
the road, along a path, or across the veld? -- We were moving
along the footpath.

And the place where you found the person being
held, was that on the road, footpath, or veld? -- It was on
the main road.

That is the main road to Fusi's? -- Yes.

How did you come to the main road? You had
been walking along a path? -- The footpath joins the main

/road

road there.

The place wherethe person was being held in the main road, how far was that from where the path and the main road converged? -- Not far.

All right. You found the person being held - and what happened? -- He was seized and killed.

Well I want some more details please, Sothi! -- No. 4 accused held the deceased.

How did he hold him? -- He held him round the neck.

Did anybody else hold the deceased? -- When we first arrived only No. 4 had hold of the deceased.

Was the deceased on the ground when you first arrived? -- Yes.

So when you first arrived, the deceased was on the ground and No. 4 had him round the neck? -- Yes.

What happened then? -- The order was we should hold the deceased.

Who gave that order? -- Chief Makione, No. 4.

And when that order was given what happened? -- We all seized the deceased.

Did you seize? -- Yes.

What portion did you seize? -- The legs.

Did No. 1, Chief Bereng, seize? -- No, he merely caught hold of the flesh.

That was later on, yes. Did Chief Gabashane seize? -- Chief Gabashane had hold of the torch.

He did not seize then? -- No, he did not seize the deceased.

Did Mojautu seize? -- Yes, No. 3 had hold of the deceased.

Whereabouts? -- I don't know where he held the deceased, because it was dark, and the light of the torch wasn't too bright.

No. 4 you have told us had hold of the neck. Did Sankatane Masupha seize? -- Yes, he also held. It was at night.

Did you see whereabouts he held? -- I think he also held. It was at night and there were many of us.

I'll go back to No. 5. Did Sankatane Masupha seize? -- Yes, he also held but it was dark.

You are certain of that? -- Yes, because he was present.

Do you know which portion he held? -- No, I can't say what portion he held, because there were many of us.

Now we come to No. 6 - Mosiuca Masupha? -- I didn't see if he held because there were many of us.

And Kemaketse Masupha, No. 7, did he hold? -- Yes, he did hold.

Did you see which portion? -- No, I didn't see where he was holding.

I am missing out an accused now m'lord. The next one, Seferi Ntsoso, No. 9; did he hold? -- Yes, he was holding.

Can you say which portion he held? -- No, I can't say where he was holding, as there were many of us.

And the next one, Ramabanta Mahleke, No. 10? -- He caught hold of the horse.

I have dealt with all of the accused you have named, now you mention a horse. Where did the horse come from? -- The horse had been ridden by the deceased.

/How

How do you know? -- It was held when I got there.

Did you actually see the deceased mounted on the horse? -- No, I did not see the deceased on the horse.

When you got there, I understand the deceased was on the ground being held by Makione and the horse was being held by Ramabanta? -- Yes.

Was anybody on the horse? -- He had been pulled down.

The horse was riderless? -- Yes.

Did you see a saddle on the horse? -- Yes, the saddle was still on the horse.

The bridle? -- Yes, the reins and bridle were still on the horse, but he was holding the reins.

Now we have got the deceased on the ground with various men holding him down, what happened? -- He was cut.

By whom? -- Ntoane.

Why did Ntoane cut? -- I don't know why.

Was there any talking while this assault on the deceased was going on? -- No, there was no talking.

Did nobody open his mouth? -- I did not hear anybody.

Which portion of the deceased did Ntoane cut? -- The lip.

Which portion of the lip? Will you please indicate on your own lip. -- (Witness indicates).

Starts from underneath the nostril on the upper lip, round the left centre of the lower lip, to opposite the place where he started. Did you see that yourself? -- Yes, I saw that myself.

/And

And what happened to the flesh from the lip that was cut? -- It was handed to Chief Bereng.

No. 1 Yes. And what happened then? -- Then he was carried.

How did you see this? This was at night time wasn't it? -- Yes.

What was the weather like? -- There was rain.

Actually raining or just drizzling? -- There was a drizzle.

Had that been going on for some time, all evening? -- Yes, for some time there had been a drizzle.

If it was at night time and it was drizzling, I presume it was dark? --Yes.

How did you see the cutting in the dark? -- There was a light.

Whatsort of a light? -- From a torch.

Who held the torch? -- Chief Gabashane.

Now you say the body was carried - by whom? -- We carried the body.

"We"? ... --(No reply)

Whom do you mean by "we"? -- All those people whose names I mentioned.

Did No. 1 assist, Chief Bereng? -- The Chiefs remained above.

Whom do you mean by "chiefs"? -- Chief Gabashane and Chief Bereng.

Did anybody else remain above? -- Mojautu, No. 3, also remained. And Ntoane.

/Yes, the

Yes, the other chief. Anybody else remain behind?

-- No. 6.

Remained behind? -- Yes, he remained with the chiefs above.

I think you had better give me the names of the people who carried will you? -- Myself; Sepalami; Molemohi; Sankatane, No. 5; Makione No. 4; Mapeshoane.

Yes, anybody else? -- Kemaketse, No. 7; I think that is all.

Are you sure? -- If I have not forgotten another.

In other words you're not sure. Well why did you carry the body? -- It was said that we must go and throw it into the donga and hide it.

By whom? -- Chief Makione, No. 4, gave the order.

And you carried out the order? -- Yes, we carried the order out.

After the body had been thrown into the donga, what did the carrying party do? -- We went up.

To where? -- To return to where the chiefs were.

When you got back there, who were there? -- The Chiefs.

Whom do you mean by "the Chiefs"? -- Chief Gabashane, Chief Bereng, Chief Ntoane, and Mojautu, No. 3.

Was he also a chief? -- No, he is a chief's subject.

Were those the only people you found when you got back from the carrying? -- Yes.

What happened then? -- It was said, "Well and good, now that you have returned; but you must not report".

And then? -- That he who would report would be

/responsible

responsible alone, for the murder.

Who told you that? -- Chief Makione, who had instructions from the Chief.

From which Chief? -- Chief Gabashane.

Did you hear those instructions given to No. 4? -- Yes.

When? Before you went down or after you came back? -- After our return from down below.

After Makione had given you this warning, what happened? -- It was ordered that we should not return home in a big group; we must divide into two groups.

Did you in fact do that? -- Yes.

You went home? -- Yes.

Who gave the instructions to divide? -- Chief Makione.

No. 4? -- Yes.

Now you held the deceased, and you carried his body - can you give us any idea how he was dressed? -- He had a blanket on.

One blanket? -- I don't know whether he had two blankets, because it was at night.

Anything else besides a blanket? -- He had boots.

Did he have boots on when you threw him down into the donga? -- No, I don't know because it was dark.

And anything else? -- Trousers.

Anything else? -- I think there was a shirt, if I remember rightly.

Just have a look at Fusi, No. 8 accused, will you? Do you know that man, recognize him at all? -- Yes.

/The killing

The killing of the deceased, as described by you, took place on a Thursday night? -- Yes.

Do you know how far that man's place is from the scene of the killing? -- It is not very far.

Did you at any time of the day or night of Thursday see No. 8 anywhere? -- No, I did not see him.

CROSS-EXAMINED BY MR. GROBELAAR:

Do you generally feed your horses at sunset? -- Yes, I often feed my horses at sunset.

And on that occasion of the Thursday when Meleke was killed you also fed your horses at sunset? -- Yes, at sunset.

And while you were feeding your horses at sunset, Makione came along and you went with him along the big road in the direction of Fusi's? -- Yes, I went along with Makione on the way to Fusi's.

You walked along the main big road? -- Yes.

And you say when you got opposite David's you saw something? -- Yes.

Do you live near the house of Chief Gabashane? -- Yes, I live near Gabashane's house.

And in order to get to the main road did you walk past a number of houses in the village and then get to the main road below? -- Yes.

And near David's you met the people whose names you gave in your evidence in chief? -- Yes.

And were these people all in the same road when you met them? -- Yes, they were in the main road.

Were they walking along? -- No, they werestanding /still.

still.

Did you know them all? -- Yes.

And after you had got to the point you have just described did you see a motor car come along? -- Yes, I saw a motor car.

And that car came from what direction - Fusi's? -- It was going in that direction.

As the car approached you did you see whether it had any lights? -- It had no lights.

And you realized that the car had no lights on because it would be dangerous for a car with lights on to accompany a party that was going to commit such a terrible deed? -- Yes, because it had no lights as we went on to Fusi's.

And it had no lights as it approached the village of Mamathe's? -- It had no lights.

And did you wait long at the place where you met this group of men before the car came along, or had you waited a short time? -- We found the motor car standing there. The motor car did not come to us there, - we found it there.

And did you see Chief Bereng and Chief Gabashane in the motor car? -- I saw Chief Gabashane in the motor car and Chief Bereng.

Was Chief Bereng sitting on the left? -- Yes.

And Chief Gabashane was sitting on the right? -- Yes.

You are describing now how those two chiefs were sitting in the front seat? -- Yes.

And Chief Gabashane was driving the car? -- Yes.

/And

And after a while you saw Chief Gabashane drive away with Chief Bereng still sitting there? -- Yes, he was sitting in the motor car.

These people drove ahead of the group, and the group of men followed them? -- Yes.

And do you say that Chief Gabashane and Chief Bereng drove ahead of this party and the party went along after them? -- Yes, but there were others in the motor car.

Who else got into the motor car? -- Mojautu, No. 3.

And Sankatane? -- And No. 6.

And Sankatane, - I don't know? -- No, Sankatane was not there. Nos. 3 and 6.

And they drove fairly fast, the people in the motor car? -- Yes.

And then as the car drove off you wondered where these people were going to? -- Yes.

And when you saw that this car drove well ahead of you, did the car then stop near Fusi's? -- Yes, the motor car stopped near Fusi's.

Isn't it a fact that Ntoane was also in the car? -- I don't know, because we had divided into two groups; I think he was also in the motor car.

You said in your evidence in chief too, this morning, that Chief Ntoane was in the motor car, didn't you?--
(No reply)

He said he thought so, m'lord. You said, Sothi, that you thought Chief Ntoane was also in the motor car? -- Yes.

And when you saw this car stop in the road near Fusi's, you wondered why it had stopped? -- Yes.

Didn't you know why the motor car stopped near

/Fusi's

Fusi's? -- No, I had no idea.

Now as soon as this car had left you you continued at a fast pace in the main road following this car? -- On the footpath.

That was the first occasion that evening on which you got on the footpath having been in the main road all along? -- When we divided into two groups and we travelled on the footpath. .

That was at David's? -- Yes.

There are numerous discrepancies in the various witnesses' evidence m'lord, the witnesses didn't see the same things, and we are also disturbed by them. Did you see whether the persons in the motor car got out at all before you got there, Sothi? -- Yes they got out before we got there.

All of them? -- Yes.

And how many of them did you see get out of the motor car? -- They were all out of the motor car.

Did you count them? -- No, I did not count them.

How far were you from these people in the motor car, the people that had been in the motor car when you saw a horse and a rider near that spot? -- The man on horseback was some distance away from us.

Just show us how far from you you saw this man on horseback when you noticed him the first time? -- As far as the motor car outside the court house.

About ... those motor cars there? At the fence? -- Yes.

HIS LORDSHIP: By the man on the horse you mean the man who was subsequently killed do you? -- No, the man that passed us.

You mean Maloi? -- Yes.

/MR. GROBELAAR:

MR. GROBELAAR: No I am referring to this man that you saw near Fusi's - how far was he away from you when you saw him the first time? -- That man I found already being seized.

Didn't you see him near the motor car as you approached it? -- No, the motor car was to one side.

And where was the horse when you saw it the first time? -- It was near us.

How far? -- As far as you are.

Twelve feet. Did you see the horse near the men next to the motor car, - nearer to them than to you? -- It was near to us. The motor car was on the main road, and the horse was not on the main road, just a little off the main road.

And did you recognize the man on the horse as Meleke? -- I found him on the ground.

And who was holding the horse? -- No. 10.

Did you see the colour of the horse? -- Yes, I saw the colour of the horse because I knew the horse.

What was the colour of the horse? -- Grey mare.

You noticed, too, that it was a mare? -- I know the horse - it is a mare.

And you noticed that it was a mare that evening? -- I know it is a mare.

What is the nearest distance that you got to the horse that night? -- As far as you are.

You didn't get any nearer to it? -- No.

Now did you see Ramabanta take the bridle off that horse? -- No, I did not see him take the bridle off the horse.

/Now when

Now when you saw the person on the ground, on which side of the main road was he? -- He was on the left of the road going to Fusi's.

You say on the left of the road going to Fusi's. Was he going to Fusi's? -- He was coming from Fusi's.

How far from the main road did you find this man on the ground? -- Not far from the main road.

Could you point out how far from the main road he was? -- Where these exhibits are.

Which exhibits? -- Those two on the far side.

About nine feet. Now the area the road passes over is rocky at that spot? -- No stones, no rocks.

Are there no stones anywhere near the place where you saw this man on the ground? -- No, there are no stones there.

Are you quite certain that there are no stones anywhere near that place where this man was held down? -- There are no stones.

Even as far as where you are standing to the door where that Policeman is standing? -- There are no stones.

Not even embedded in the ground? -- There are no stones.

Can you demonstrate how this deceased man was being held down when you came near him? -- Yes, I can demonstrate.

Just get out of the witness box and show the Court.

HIS LORDSHIP: Perhaps we might adjourn now for a quarter of an hour.

COURT ADJOURNED.

/ON RESUMING

ON RESUMING:

SOTHI CHELA, (under former oath)

CROSS-EXAMINED BY MR. GROBELAAR (Continued)

HIS LORDSHIP: Now we will have the demonstration.

MR. GROBELAAR: Now Sothi would you please show the Court how the deceased was being strangled by Maklone when you saw him. -- The man was lying on his back.

Which way was his head pointing, - to the road? -- No, I didn't pay particular notice as to which way the head was facing.

Was the head ... don't you know whether the head was pointing at Fusi's house, or was it pointing in the direction of Mamathe's? -- No, I don't know which way it was facing.

HIS LORDSHIP: Did No. 4 do this? -- Yes.

How was he standing? -- He was standing on the right hand side of the deceased.

MR. GROBELAAR: Could the constable lie down on the bench? -- (Witness demonstrates).

Did you see Maklone press with both hands with all his might? -- Yes.

Did he have to press for a long time? -- Yes, a long time.

And did he continue throttling the deceased until he was dead? -- Yes, until he was dead.

And did you hear Maklone say to Chief Gabashane, "Now, there you are; the man is dead now"? -- No, I did not hear that.

Did you see that the man was dead, and did you

/feel

feel that he was cold after Makione had throttled him? --
Yes.

And when you noticed that the man was dead, did you all stand away from him and find out what other orders had to be carried out? -- Yes, we stood to one side and waited for orders.

And were you on the point of leaving then? --
Yes.

Did anyone tell you not to go away? -- No, we were waiting to carry him away when we stood to one side.

How far away from the body did you stand to that time? -- No, not far from the body.

Who was the person that spoke? -- Chief Makione spoke.

And what order did he give? -- He gave the order, "It is said that you must carry the dead body and throw it in the donga".

Chief Gabashane didn't speak then? -- He did not speak.

Did you see two torches being used when the deceased was being throttled? -- There was one.

Which part of the body of the deceased did the torch illuminate? -- The face.

The torch didn't shine on any other part of the body of the deceased? -- No, it did not.

And it was very, very dark that night? -- It was very dark.

Do you know whether the deceased was wearing brown or black shoes? -- He was wearing black shoes.

You could notice it that night? -- Yes.

/Now

Now do you really mean to tell the Court that you could on that dark night, distinguish the colour of the boots on the deceased and also the colour of the horse that he was riding? -- I was able to distinguish the colour because there was a torch.

But you told us the torch did not shine on the boots at all. -- As we raised him from the ground before the torch was put out.

The torch never shone on the mare, did it? -- As we raised the deceased from the ground, and the torch was still lit, we were able to see the horse.

The other witnesses say the horse had run away by then? -- I don't know about that; it is they who know about that.

When the deceased was being throttled, was the mare standing next to him? -- Yes, the horse was standing there.

How far from him? -- From me to where you are standing.

And did the mare stand there looking on, while its master was being killed? -- I don't know; it was being held.

By whom? -- No. 10 accused.

You see Molemohi said the bridle was taken off and the horse ran away? -- (No reply)

If a bridle is taken off a horse under those circumstances would you expect the horse to stand, or would the horse run away? -- I don't know; I saw the person holding the horse.

Now when the body was being carried down to the donga, were you carrying it with your hands hanging down

/and

and was the body being carried in that way? -- Yes, we held it with our hands down.

Will you just show on this saddle, on the bench, how you were carrying this body? -- (Witness indicates).

And were some people on the one end of the body and the other people at the other end, and did you walk with the body with the side foremost? -- (No reply).

Are you indicating now, where you are touching, would that be the head or the feet? -- The feet.

Would somebody else be taking the head? -- Yes.

Just show us how you walked forward? -- Towards the sergeant.

Now is this the way? Correct this position if there is anything wrong with it in regard to the carrying. Did you carry it just like this? -- Yes.

All the time? -- Yes, all the time.

And were only two of them carrying at a time, and then they would rest and two others would carry? -- No. There were five of us.

Are you certain there were only five of you? -- Yes, there were five and we kept changing.

And were all five carrying the body at the same time? -- Yes.

And you all knew the ground so well that you never stumbled, you kept on your feet? -- We did slip but we didn't actually fall.

None of you ever fell on your buttocks? -- I didn't see him.

If anyone had fallen in that way you would have
/noticed

noticed it? -- I would have heard because he would have spoken.

Now as you went towards the donga, did you, when approaching it, walk on the left side of the donga first or did you walk on the right side of the donga? -- On the left hand side.

You walked on the left hand side of the donga - and did you walk from the top of the hill nearly to the bottom side of the donga? -- (No reply).

Up to a point near the mouth of the donga? Well, any entrance, any place where the donga starts. If the witness doesn't understand, I'll explain. Did you walk beside the donga up to the point where the mouth of the donga is? -- Until we came to where we threw the body.

Yes. Was that at the one end of the donga? -- No, that is not where the donga ends where we threw the body.

How far from the point where the donga ends did you throw this body down? -- No, I didn't look to see, as it was at night.

Did you walk on the bank of the donga until you came to a place from where you threw the body into the donga? -- No, we went straight to that spot.

Now I want to understand what you mean by that. Did you walk on the side of the donga, and then when you came near it, did you throw the body down? -- We went straight to the spot on the left.

And then were you standing on the grass on the bank of the donga when you threw the body into the donga? -- Yes, we were on the grass.

/And you

And you kept on the grass all the time? Until you came to the point from which you threw the body into the donga? -- Yes, it is so.

And you were walking on a level surface on the grass all the time until you threw the body into the donga? -- We were walking on the grass.

You at no point of time walked into the donga first, or into part of the donga, and then get out of the donga before you threw the body into it? -- I didn't see because it was at night.

But if you had done so you would have felt that you were going down and that you would have had to come up again? -- I would have noticed it.

Do you know how deep the donga was at the point where you threw the body into it? -- No, I don't know how deep it was because it was at night.

When you threw the body into the donga, did you throw it forward, sideways, or the head of the body first, or the feet of the body first? -- We just threw it.

And when you threw the body into the donga, did you hear a thud as the body touched the ground? -- Yes.

Did you identify the boots before the Court at the Preparatory as those belonging to the deceased?

Now did you identify these boots, exhibit 3, as the boots that the deceased wore that night? -- Yes.

I put it to you that it was impossible for you to identify these boots seeing that the deceased wore them at night. -- I knew the boots, the deceased always wore them. I knew them.

/And did

And did you have a particularly good look at those boots that evening? -- I didn't look particularly at the boots, but when I saw them I recognized them.

Do you mean to tell the Court that you could even identify the blanket before the Court as the one that he wore that night? -- Yes.

Isn't this blanket very much like any other blanket? -- I know it.

Is there any distinctive mark on it? -- I saw it on him.

When the lips of the deceased were cut, I expect the lips bled? -- I don't know if the lips bled, but I did not see blood.

Oh, you didn't look at the face of the deceased after the lips had been cut? -- No, I did not look at his face.

When the corpse was carried, did you have any torch with you? -- We had no torch.

Isn't it a fact that the deceased was not killed that evening in the company of these people that you have mentioned? -- It is true.

You see they deny that they were at the killing, or had anything to do with it? -- They were present.

CROSS-EXAMINED BY MR. MAISELS:

Sothi you were arrested some time in May or June Is that correct? -- I don't know the month.

At all events you were in custody for some time before you made a statement to the Police officer? -- Yes.

And you made the statement, I understand, to Lieut. Castle? -- Yes.

And I take it that he asked you questions and you

/answered

answered them? -- Yes, I answered.

He asked you whether No. 1 accused, Chief Bereng,
and
was there, /you said "Yes"? -- Yes, I said "Yes".

He asked you whether Makione, No. 4 accused, had
come to fetch you and you said "Yes"? -- Yes, I said "Yes".

He asked you whether Chief Ntoane had taken the
knife and cut the man's lip and you said "Yes"? -- I said
"Yes".

He asked you whether Chief Gabashane was there
and whether he was driving in a motor car and you said "Yes"? --
Yes.

And that was the way you gave your statement? --
Yes.

HIS LORDSHIP: That is the way he has given most of his
evidence in cross-examination too.

MR. MAISELS: That is the point I was trying to make, m'lord.
Sir, my learned friend the Attorney-General says I should
have put this to Mr. Castle. It was impossible for me to
put this to Mr. Castle until I had seen the witness.

HIS LORDSHIP: There is nothing improper that you are
suggesting?

MR. MAISELS: Nothing is suggested except that the witness
is susceptible to suggestion, that 's all. Sothi did Mr.
Castle send for you and ask you whether you wanted to make
a statement? -- He sent for me.

Yes. Then did he start asking you questions? -- Yes.

You made the statement, and answered the
questions, quite voluntarily? -- Yes, quite voluntarily.

HIS LORDSHIP: Did he tell you that you needn't make a

/statement

statement if you didnt want to? -- He did not say so. He asked me to state what I knew.

MR. MAISELS: And his method of asking you to state what you know was to ask you specific questions? -- Yes, he asked me questions.

He asked you questions and you answered? -- Yes.

Did he seem to know a lot about this thing? -- No, I didn't know.

But he asked you questions; didn't those questions seem to you to indicate that he knew quite a lot about the thing? -- Yes, it showed that, because I heard his questions.

Now Sothi, you were in the same camp as Molemohi, Sepalami, and Mapeshoane? -- Yes.

And did you sleep together? -- Yes, we slept together.

You used to mix together in the day time? -- Yes.

You used to talk to one another in the day time? -- Yes, in the day time.

And in the night time? -- We slept together at night time in the presence of the police.

And at night time there was no talking? -- Even at night, we did not speak, we only conversed.

I don't appreciate the difference Mr. Interpreter. What is the witness trying to say? -- (Interpreter) He is trying to say "We did not discuss the case".

Oh, I see. You merely spoke about other matters? -- Yes, other matters.

Do I understand you to say that in the day time you did not speak about the case either? -- No, we did not

/discuss

discuss it, because we had the police there all the time.

No opportunity to speak about it at all? -- There was no opportunity.

And since July all four of you have been together in the Police Camp, have you? -- No, we did not arrive there at the same time.

You have been staying in the same camp since the Preparatory Examination? -- Yes, we stayed at the same camp.

And you slept in the same room? -- Yes.

Since then I suppose you have not discussed the case at all? -- We have not discussed the case.

Not a single word? -- Not a single word.

Have you seen Mapeshoane since he gave evidence here a couple of days ago? -- I saw him arrive because we live in the same house.

Yes. Did you speak to him? -- I did not speak to him.

Not at all? -- No, not at all.

And the same to Molemohi? -- Nothing at all.

Nothing. Well Sothi I want to come to the night when this happened. What night of the week was it? -- It was Thursday night.

Not Wednesday? -- No.

Have you always been sure it was Thursday? -- Yes I know.

That was the day on which Meleke was killed? -- Yes.

Did you say this to the Magistrate: "I knew Meleke Ntai. He was killed on a Wednesday or a Thursday". (About 12 lines from the commencement of his evidence m'lord). However it was a Thursday and as I understand

/from

from you, as the sun was going down you ^{were} / summoned by a man, Makione? -- Yes.

And then you went and met the other men? -- Yes.

Did you walk for a long time before you met the other men? -- Not very long.

It was still early in the evening, then? -- Yes.

And then you met at a place that you call "David's place"? -- Yes.

Was it there that you split into groups? -- Yes.

Right. Now, having split into groups did you move off? -- Yes.

There were two groups on foot and one group in a motor car, is that right? -- Yes.

Who went first? -- (No reply)

I think I better put it this way. Did you all follow the road? -- Yes, we were on the road.

That is the motor car and the two groups? -- But after we had divided the groups on foot went on the footpath.

On the side of the road? -- Yes.

What was the order of the procession? Motor car in front, motor car behind, or motor car in the middle? -- Motor car in front.

The order was the motor car in front - with the lights on? -- No the lights were not on.

No lights at all? -- Yes.

Mapeshoane said there were lights but that they were very dim lights? -- It may be I did not see, and that question of course should be directed to him.

Yes, quite. I am just directing it to you because I thought you might be able to assist us.-- I did

/not

not see the lights on myself

And who were in the car? Tell me again? -- Chief Gabashane.

Who else? -- Chief Bereng.

Who else? -- Chief Ntoane.

Who else? -- Mojautu, No. 3; Mosiuoa, No. 6.

They were in the car. Now Group 1, how many were there ... How many in the car, five? -- Yes.

And how many in group 1? -- It was No. 4, Maklone; Ramabanta, No. 10; Kemaketse, No. 7; Sankatane, No. 5; that is all and Molemohi.

That is five? -- Yes.

And group 2? -- Mapeshoane; Sepalami; Sothi; Seferi, No. 9; - that is all.

Four. Now I take it you have always been quite certain that No. 1 accused went in the motor car? -- Yes.

He went in the motor car from the time you moved off until the time you saw him again where the killing took place? -- Yes.

Did you tell the Magistrate this: "No. 4 accused and others left in the first group. Others in that first group were Chief Ntoane; Accused No. 10, Ramabanta; and No. 1 accused," (i.e. Bereng). Was that a mistake? Was it a mistake? -- Ntoane was in the motor car.

And Bereng? -- Bereng was in the motor car.

So that is a mistake that you made before? -- (No reply).

Or didn't you say that to the District commissioner? -- I have forgotten.

/Did

Did you say this to the District Commissioner? --

Yes, I said so.

HIS LORDSHIP: Did you say that Ntoane and No.1 were in the first group? -- Yes.

MR. MAISELS: Now did you make a mistake before the Magistrate or are you making a mistake now. -- No, that was not a mistake.

Then ^{what} / is the mistake now? Are you making a mistake today? -- May be the mistake is today.

Well what is the position? Because I asked you very clearly about that. -- It is possible that I may have made a mistake today, because I may have forgotten as this happened a long time ago.

What is the position now? Can you really remember how the parties were divided or are you guessing altogether today? -- I know that the parties were divided, as I have explained.

But the persons, the way in which they were divided, is that what you have forgotten? -- I have all along been saying another group was in the motor car, another group behind.

Another group behind? -- There were three groups. One group was in the motor car.

And two other groups? -- Yes, the groups on foot.

And the first group in the motor car was ahead of the other two groups who were on foot, is that right? -- Yes, ahead of the two other groups.

And what was the distance between the two groups

/of men

of men on foot? -- A long distance. From here to down below the Police Camp.

As far as where? -- As far as the house right down there, that red building.

100 yards. There was 100 yards distance between the two groups, is that right? -- Yes.

And that distance was maintained the whole way? -- Yes.

You allowed the first group of men to walk off and you waited until they were about 100 paces ahead, and then the second group started walking? -- Yes.

And now there is no mistake about that, is there? -- No, there is no mistake.

And there is no mistake about this difference between 100 paces and the distance say from where you are to where this door is, is there? -- Yes.

Did you tell the District Commissioner that when you moved off there was only 15 paces distance between you? -- That is the distance from here to the house where I pointed.

What? 15 paces? - - I didn't count the paces.

When you were giving evidence on the last occasion you were asked to point out objects just in the same way as you have been asked to point out objects today, is that not so? -- Yes, I did point out the objects the same way as I did today.

So you say you pointed out an object about 100 paces away and not an object about 15 paces away? -- No, I pointed out the same distance.

So the District Commissioner has made a mistake

/when

when he says the first group moved off followed by the second group about 15 paces behind? -- I don't know.

The situation then was that you were in group 2, or group 3? -- Group 3, yes, the last group.

And do I understand the situation to be that you saw ... did you continue the same distance between you right up to the time when the killing took place? -- Yes.

And was No. 4 accused in the first group of men walking, or in the motor car, or in your group? -- No. 4 was in the second group of men on foot, that is after the motor car.

Yes, but not in your group? -- No, he was not in our group.

And then you say a horseman passed you on the way? -- Yes.

Could you recognize the people in the first group from 100 paces away? -- Makione, No. 4, remained behind, and it was for that reason that I was able to identify him.

No. 4 remained behind. Where? -- He stood with the rider.

For a long time? -- Not a long time.

Did you catch up to him? -- We passed him.

You passed him? -- And then he came and passed us again.

Oh, he passed you again! Is that so? -- Yes, he passed on to the first group.

So that the position was that he was in the first group, 100 paces ahead? -- Yes.

And where was the horseman, on the road? -- Beside
/the

the road.

And Makione? -- He stood outside the road with the man.

And he spoke to him for a time? -- Yes, for a short time.

Now did Mapeshoane see this? -- I don't know if he saw this.

Could he help seeing it? -- He could have seen it.

He couldn't avoid seeing it if what you say is true ? -- Yes.

He never says a word about it? -- I don't know.

Tell me, did Mr. Castle ask you whether you had seen No. 4 accused talking to Maloi, No. 11? -- I told him.

Did he ask you? -- He asked me.

And did he ask you whether No. 11 was riding past on horseback? -- He asked me if he was on horseback.

And did he ask you whether he stopped and spoke to No. 4? -- Yes, he asked me.

And to all those things you said "Yes"? -- Yes.

And tell me, how far from you was No. 11 on the horse? -- As far as the door. (12 yards).

Was it a dark night? -- It was just as it was beginning to get dark.

Oh, I see. This attack wasn't late in the night at all. I forgot. Of course it was at sunset? -- It was at dusk. You would be able to recognize a person passing at a distance.

That is very interesting. You see, I have understood from the other witnesses, I may be wrong of course, that it was a dark night. -- No, it was not yet so very dark.

/You would

You would be able to recognize a person passing by.

Quite. Because at that time it is very easy, isn't it? -- Easy to do what?

To recognize anybody? -- Yes, that was why we were able to recognize.

And the killing took place just a short distance from where you passed No. 11? -- A long distance from where we passed No. 11.

Well I don't suppose you could point it out? Was it about a mile? -- From here to that mountain there.

M'lord it can't be as far as that, because I understand that from the Khohlong of Chief Gabashane to where the killing is alleged to have taken place, is about two miles, so it is obviously incorrect. Point H. on the plan must be nearer, because H. is on the road. HIS LORDSHIP: It must be very much nearer. This man says they brought him to G. and I understand H. is the point marked by Lieut. Castle.

MR. MAISELS: If Your Lordship pleases, just a little further on is J. where the assault is supposed to have taken place.

HIS LORDSHIP: Yes, but I understood from one witness that it was almost immediately the first rider had passed that the other one came along.

MR. MAISELS: Molemohi said it was shortly after the rider had passed that they came across the deceased.

COURT ADJOURNED.

FIFTH DAY.

SATURDAY, 6th NOVEMBER, 1948.

THE CROWN CALLS:

SOTHI CHELA, (under former oath)

CROSS-EXAMINED BY MR. MAISELS:

You continued walking on after that conversation had taken place between No. 11 and No. 4 accused? --

Makione and Moloi?

Yes. Now, did you speak - the place where Makione spoke to No. 11, was this just near David's place? -- Yes.

That must have been quite near to where the killing took place? -- No, it is far away.

We saw it yesterday, and when the killing started, was it still light? -- It was in the evening, but you could see a person passing on a motor car. I could not see very well.

But you could see it wasn't quite dark yet? -- It was not quite dark yet; I could not see very well.

That was the time when the killing took place? -- No, the killing did not take place at that time.

The killing took place a little later? -- Yes, a little later.

A little later. Was it just dark? -- It was dark.

Just dark? Just got dark? -- It was dark.

Was it just after dark, do you know was it late in the night? -- It was at night and it was dark.

Will you answer whether it had just got dark or whether it was late at night? -- It was just after dark.

Just after dark. And near the place where the killing took place are some huts, within 30 or 40 yards of where the killing took place? -- I don't know.

/You don't

You don't know? -- I cannot read.

I didn't ask you about reading. You can see, can't you? -- Yes, I can see.

You can see. Did you see any huts - are there huts within 30 or 40 yards of the spot where the killing is supposed to have taken place? -- I know there are huts there.

Are there huts within the distance of where the first motor car is standing on the road? -- Beyond the motor car.

Beyond the motor car - 60 yards. Now, could you recognise the person who was lying on the ground? -- I could not recognise him.

Did you see his face? -- I recognised him when it was lighter. I saw his face.

You saw his face. Was it easy to recognise who it was? -- Yes, it was easy because I knew the man.

After he was killed, you were told to take him down and throw the body away? -- Yes.

How many of you carried the body down? -- I did not count how many there were.

Did you give the names of the people yesterday? -- Yes, I did mention the names.

Well, can you mention the names again? -- Yes.

Well, do so. -- Maklone (No. 4), Sepalami, Molemohi, Mapeshoane, Sankatane (No. 5), Kemaketse (No. 7), those are the people I saw well.

That was seven of you. Were there only seven of you? -- I don't know, because it was dark, but those that I mentioned I actually saw.

You actually saw. You saw no others? -- Yes,

/because it

because it was dark.

Now, going down to where the body was finally thrown, it's a very steep place, isn't it? -- Yes.

Very slippery place? -- Yes.

In some parts it's very narrow? The footpath is very narrow? -- Yes.

Was it a hard job? -- Yes.

Any lights? -- No.

Raining? -- Yes.

Did any of you fall? -- I don't know.

Did you notice anybody fall? -- No, I did not see anyone fall.

How many of you carried the body? -- There were five.

Five. Now, two other witnesses have said that the time when this killing took place was late in the night. Are they correct or are you correct? -- I don't know if they are correct - that is the question to be asked of them.

Did No. 3 accused, Mojautu, did he carry the body down? -- I don't know, it was at night.

You didn't see him? -- I did not see him.

Did No. 9 accused, Saferi, carry the body down? -- He was there.

Did he carry the body down? -- Yes. He was one of those with us.

So then it was eight of you who were there with the body? -- Yes, because it was at night.

I don't follow, "because it was at night." Did you forget about No. 9 before? -- Yes, I forgot to mention No. 9.

Now, when the body was thrown down, did you throw
/the body

the body into the donga face upwards? -- I don't know. It was at night.

You don't know. You couldn't see? -- Yes.

Did you tell the District Commissioner, "We threw the body into the donga face upwards."? -- I don't know if I said that, it is possible that one may forget.

Yes, but was it correct? -- If I said so, then I was correct.

You now say that you threw the body in face upwards? -- I don't know, it was at night. I don't know whether the face was up or down.

HIS LORDSHIP: He said in evidence in chief today, "I don't know if the body was thrown face upwards". But he said it to the Court below, and here he says, "If I said so to the Court below that the body was thrown face upwards, then it was correct."

MR. MAISELS: I am trying to ask the witness whether, in fact, he does say how the body was thrown or whether he doesn't know, and I want to know what the position is? -- I say we threw the body into the donga.

And you don't know whether it was thrown in face upwards or not? -- Yes, it was at night.

Did you hear any noise when the body was thrown into the donga? -- Yes, when it struck the ground.

Did it make a good noise? -- No, ^{not}/a big noise.

A thud? -- Yes.

Splash? Any splash of water? -- Yes.

HIS LORDSHIP: Did you say this to the Magistrate, "I did not hear any noise when we threw the body into the donga"? -- There was a sound in the donga.

A sound in the donga. Did you say that to the

/Magistrate?

Magistrate? -- I said to the District Commissioner that there was water in the donga because it was raining.

MR. MAISELS: Did you tell the District Commissioner, "I did not hear any noise when we threw the body into the donga"? -- I did not say so.

You didn't say so? -- No, I did not say so.

Was your evidence read over to you? -- Yes, it was.

Did you hear the sentence which I have just read out? -- I heard the statement read out to me.

And you say you never said what I just read out? -- I did speak those words, all the words that were recorded were the words spoken by me.

So do I now understand that you admit that you said it? -- Yes, I did speak those words which you have just read out.

Thank you. Why did you deny it just now? -- No, I did not deny it.

You say you didn't deny having spoken those words just now? -- No.

Could you see the depth of the donga from which the deceased was thrown - how far to the bottom of the donga? -- No, I did not see the depth, because it was at night.

Did they throw it down with great force? -- Not with very great force.

Did you just throw it away? -- Yes.

Are there lots of rocks about there? -- There are no rocks.

No rocks. Lots of stones? -- I don't know, because it was at night.

/Is there

Is there any part of the ground there where there aren't any stones? -- There is a place where there are no stones.

Did you carefully select that place to throw the body? -- No, we did not select this place.

But most places have got stones there? -- Yes, there are stones.

There is just one thing I want to get clear from you. Molemohi says that he didn't recognise the person who was killed? -- I don't know, perhaps it may be he doesn't know him, but I know the man myself.

Well, he says he knew him before. Would it be possible for anybody who knew the deceased before not to recognise him that night at the time he was being killed? -- I recognised him myself.

And it was quite easy - there was the torch? -- Yes.

And it had just got dark? -- It was dark.

And when you were carrying the body down, weren't you discussing about the person who had been killed? -- No, we did not discuss the man we killed.

MR. THOMPSON: No Re-examination.

HIS LORDSHIP: You told us that you saw No. 4 (Makione) throttling the man? -- Yes, I saw him.

You say that a number of people caught hold of him? -- Yes, a number of people caught hold of him.

By his body? -- Yes.

Did you see anybody else do anything to the top part of his body - from his neck upwards? -- I only saw the lip being cut.

/You saw

You saw nobody do anything to his eyes, his nose or his mouth? -- I did not see anything else except the cutting of the lip.

If anybody had put his two hands over his face, would you have seen it? -- As there were many of us there, I did not see.

You did not see. When the lip was cut, which hand did the man who cut the lip do it with? -- He used his right hand.

Did he do anything with his left hand? -- He was holding the lip with the left hand.

He, who was holding the lip, being Ntoane? -- Yes.

Was there blood when the cutting took place, or afterwards was there blood? -- I did not see blood.

None at all? -- None at all.

Well, there was a pretty extensive cutting, wasn't there? -- The cutting was as I indicated yesterday.

Wouldn't you have expected blood? -- Yes; I expected blood, but there was no blood.

There was no blood or you didn't see it, which? -- I didn't see.

ASSESSOR MOKHEHLE: You told the Court yesterday that Makione (No. 4) is the headman of Mamathe's village, is that right? -- Yes.

What is Fusi's work? -- Fusi is our doctor. Fusi is the doctor for all the people.

Did you say you saw him there? -- Yes, I saw him there.

Fusi? -- Yes, I saw Fusi there.

What did he do? -- I saw him there but I did not see what he did.

/HIS LORDSHIP

HIS LORDSHIP: When was it that you first saw Fusi? -- When I arrived at the spot where the deceased was.

Did you first see the people holding the man down, then Fusi came, or what stage did Fusi come? Did you see him walking to the place, or was he there when you came? -- I saw Fusi at the time when the men were holding him down - there were many people there.

Did you see him doing anything? -- I did not see him do anything.

How far was he away from the man who was on the ground? -- We were standing all together.

You were standing together? -- Yes.

Anybody want to ask any questions arising out of this?

MR. MAISELS: Yes. Do you remember the Attorney-General, my learned friend, asking you yesterday - almost his last question to you - whether Fusi was there the night of the killing?

HIS LORDSHIP: Just let me turn up this, almost the last answer, "Yes, I did not see Fusi there any time that night."

MR. MAISELS: Yes. Do you remember my learned friend asking Fusi to stand up? -- Yes.

And you remember my learned friend asking you whether you had seen Fusi at any time of that day or night? -- I was asked about the day time only.

Oh no you weren't. M'lord, the witness said, "I did not see Fusi there at any time that night". And Sothi, you answered that you did not see him at any time during that day or night? -- I was not asked about the night yesterday, I was asked about the day only.

/You were

You were not asked about the night! Well, I've got it at any rate and we can see whether it is correct, "I did not see him at any time that night".

Did you give evidence before the District Commissioner? -- The District Commissioner did not ask me about Fusi, therefore I did not mention him. All I said was we were going to see Fusi.

You never mentioned Fusi at all as having been there during the course of the evidence you gave before the District Commissioner? -- I only mentioned Fusi's name that we were going to his home.

Yes. You did not mention the fact that he was there at all during the night? -- I did not say so because I was not asked.

Weren't you asked to give the names of the persons who were there at all material times? -- I took it that I must have included his name when I said that we went to Fusi's.

Is that the latest explanation? By mentioning that you ^{were} going to Fusi's, you took it that you had included his name? -- Yes.

Did you speak to Molemohi yesterday? -- No, I did not speak to Molemohi.

Did you speak to Mapeshoane yesterday? -- No, I did not speak to Mapeshoane.

Did you speak to Sepalami yesterday? -- I did not speak to Sepalami.

Because it's a funny thing that for the first time since you've given evidence, you mentioned in reply to the Assessor that Fusi was there? -- Yes, because he asked me a direct question about it.

/What was

What was he doing? What was Fusi doing? -- When I saw Fusi, he was standing there.

Only standing there? -- Yes.

Did he take any part in the assault? -- I don't know, he might have. I did not see him take part.

Did he help to carry the body down? -- No, he did not.

Are you sure about that? -- Yes.

And what happened to Fusi afterwards? -- He remained at his home.

He remained at his home. Did you see him go there? -- I did not see him.

You did not see him. Then why do you say he remained at his home? -- Because I did not see him amongst us.

You were asked a question as to the people who remained behind when you took the body down to the donga. Were you? -- Yes.

Did you mention Fusi's name as being one of the persons who were left behind? -- No, I did not mention it.

Why not? -- I forgot Fusi.

MR. GROBELAAR: Now, will you please demonstrate on your own lips how the lips of the deceased were held? -- (Witness demonstrates). (Witness also demonstrates how cutting took place).

HIS LORDSHIP: Let him come here. (Witness demonstrates to Bench).

The witness demonstrates as to how the lips were cut with the lips pressed together. He started from the left side of the lips to the nostrils, then downwards across the top lip to the lower lip cutting lower lip and along the lower lip to the right, but witness is unable to say how

/far it

far it has gone.

MR. GROBELAAR: Witness demonstrates the cutting took place while the lips were pressed together.

HIS LORDSHIP: Demonstrates how the lips were cut when the lips were pressed together as demonstrated previously. The lower lip is held by the thumb, the thumb and the first finger pressed the lips together and the first finger is pressed near the left nostril - the lips were pressed together and the cutting took place from left to right along the lower lip, the knife passing over the first finger.

Any objection to that?

MR. THOMPSON: All this took place at night time? -- Yes.

By the light of a torch? -- Yes.

Did it take a long time or a short time? -- It took a short time to cut.

I'm talking about the cutting of the lips? -- A short time was taken.

To what extent do you maintain that you could tell us precisely how the lips were cut? -- I saw very well when the lips were cut.

To what extent can you say precisely what happened? -- I can only say what I saw when the lips were cut.

HIS LORDSHIP: You see, two other witnesses have given a different demonstration of how the lips were cut.

MR. THOMPSON: The witness said to Your Lordship, through the interpreter, "I could not see where it started or where it ended because it was dark".

COURT ADJOURNED.

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